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COUNCIL OF MINISTERS
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R E P O R T

OF THE ADMINISTRATIVE SECRETARY GENERAL

ON THE QUESTION OF SOUTH WEST AFRICA (NAMIBIA)



CM0226

MICROFICHE

REPORT OF THE ADMINISTRATIVE SECRETARY-GENERAL
ON THE QUESTION OF SOUTH WEST AFRICA (NAMIBIA)

1. It will be recalled that on October 27, 1966, the United Nations General Assembly by resolution 2145 (XXI) terminated the mandate of South Africa over the Territory of South West Africa and vested the administration of the Territory in the United Nations itself. In that resolution the General Assembly declared, inter alia, that it :
 - "2. Reaffirms further that South West Africa is a territory having international status and that it shall maintain this status until it achieves independence ;
 3. Declares that South Africa has failed to fulfil its obligations in respect of the administration of the mandated Territory and to ensure the moral and material well-being and security of the indigenous inhabitants of South West Africa and has in fact, disavowed the mandate ;
 4. Decides that the mandate conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa is therefore terminated, that South Africa has no other right to administer the Territory and that henceforth South West Africa comes under the direct responsibility of the United Nations ;
 7. Calls upon the Government of South Africa forthwith to refrain and desist from any action, constitutional, administrative, political or otherwise, which will in any manner whatsoever alter or tend to alter the present international status of South West Africa."
2. Subsequently, by resolution 2248 (S.V) of 23 May, 1967, the General Assembly established a United Nations Council for South West Africa consisting of eleven Member States and assisted by a Commissioner for South West Africa, to administer South West Africa until independence. On June 13, the Assembly elected Chile, Colombia, Guyana, India, Indonesia, Nigeria, Pakistan, Turkey, United Arab Republic, Yugoslavia and Zambia as members of the said Council. The Legal Counsel of the United Nations, Mr. Constantin Stavropoulos, was also appointed acting Commissioner. In terms of the United Nations resolution,

this eleven-member Council was endowed with legislative and administrative functions and was directed to operate in South West Africa from August 1, 1967 until the proclamation of independence for South West Africa in June 1968.

3. In flagrant violation of General Assembly resolution 2145 (XXI), the Pretoria regime has continued to take constitutional, legislative and administrative steps in violation of the international status of South West Africa. In the meantime, the illegal situation prevailing in the international Territory of South West Africa continues to affect the daily lives of the inhabitants of the Territory as a result of the enforcement of the policy of Apartheid.

4. Of the total area of 318,261 square miles in South West Africa, only 79,708 square miles are reserved for the Africans who constitute 82 % of the total population. 153,872 square miles of farms and 1,819 square miles of urban territories, including all the industrial and mining centres, continue to be reserved for the European minority, who constitute less than 18 % of the total population of the Territory.

5. Following the recommendations of the so-called Odendaal Commission, the Pretoria regime is continuing to intensify its imposition of Apartheid and racial discrimination. In 1967 the Pretoria regime promulgated the so-called "Terrorism Act" and illegally tried 37 South West African nationals in Pretoria. On January 26, 1968, 30 of the accused were "found" guilty of "terrorist activities" and three others guilty under the "Suppression of Communism Act". One was acquitted, and judgement was deferred in the case of one who later died in prison.

6. On the same day, January 26, the United Nations Security Council called on South Africa to free all the accused and condemned South Africa for refusing to heed earlier appeals by the General Assembly.

7. The sentences were imposed on February 9, 1968, as follows :

I. Life imprisonment (19)

- 1 - ELIASFR TUHADELENI
- 2 - SIMEON SHIHUNGELENI
- 3 - IMMANUEL AUGUSTUS SHIFIDI
- 4 - RUDOLF KADHIKWA
- 5 - BETUEL NUNJAHGO
- 6 - MALAKIA SHIVUTE USHONA
- 7 - PETRUS KAMATI
- 8 - SIMEON NAMUNGANGA HAMULEMO
- 9 - NDJAULA TSHANINGAU
- 10 - REHABEAM OLAVI NAMBINGA
- 11 - JOHANNES OTPO NANKUDHU
- 12 - JULIUS ISRAEL SHILONGO
- 13 - KALEB TJIPAHURA
- 14 - ABEL HALUTENI
- 15 - MATIAS ELIAS KANYUELE
- 16 - JOHANNES SAMUEL SHIPONENI
- 17 - PHILLEMOM SHITILIFA
- 18 - SHINIMA NAILENGE
- 19 - SAKIUS PHILIPUS ITIKA

II. Twenty years imprisonment (9)

- 1 - LAZARUS ZACHARIAH
- 2 - JOSEPH HELAO SHITYUVETE
- 3 - FESTUS NEHALE
- 4 - PETRUS SIMON NILENGE
- 5 - DAVID HAMUNIME SHIMUEFELENI
- 6 - EINO KAMATI EKANDJO
- 7 - NGHIDIPO JESAJA HAUFIKU
- 8 - NAFTALIE AMUNGULU
- 9 - TOIVO HERMAN JA TOIVA

III. Five years imprisonment (2)

- 1 - JONAS NASHIVELA
- 2 - NATHANAEL LOT HOMATENI

IV. Five years of imprisonment on Alternative Charges Under the
"Suppression of Communism" (3).

- 1 - IMMANUEL MACHUIVILLI
- 2 - JOHANNES GUANUPUPU OTTO
- 3 - JOSON DANIEL MUTIMBULUA.

8. Legislation designed to impose Apartheid on nationals of South West Africa was promulgated by the Pretoria regime even before the termination of its mandate on October 27, 1966. The list of such legislation is attached to this report as Annex I. It will be noted that the list contains provisions of many laws, proclamations and ordinances, all which have the effect of imposing and maintaining Apartheid and racial discrimination in the Territory. It goes without saying that in order to apply the most elementary rights to the inhabitants of South West Africa, these and such other discriminatory laws, proclamations and ordinances must be repealed and replaced by other laws promulgated by the people of South West Africa.

UN Council's attempted entry.

9. In an attempt to discharge the functions and responsibilities entrusted to it by the Assembly in a resolution passed in May and December 1967, the United Nations Council for South West Africa left New York on April 5, 1968, for South West Africa. In the first resolution the Council was requested to proceed to South West Africa with a view to taking over the administration of the Territory, ensuring the withdrawal of South African police and personnel, and replacing them by personnel operating under the authority of the Council. The Council, moreover, was also asked to do all in its power to enable the Territory to attain independence by June 1968.

10. However, the UN Council for South West Africa latter decided to return to New York, after having visited only Zambia and Tanzania. In a communiqué issued in Dar-Es-Salaam, on April 18, 1968, the Council said that attempts to charter a commercial aircraft to enter the Territory had not succeeded "because of South Africa's persistent defiance of the authority of the United Nations". However, the Council stated the Zambia Airways Corporation had offered an aircraft to be chartered by the United Nations under the Organization's responsibility. "In view of the administrative and other issues involved, the Council

referred the matter to the Secretary-General for consideration and action", the communiqué stated. "The Council has been informed by the Secretary-General that examination of these issues, in consultation with the appropriate United Nations organs, will take some time. The Council, accordingly, has decided to return to New York, and will proceed with the plans to enter the Territory as soon as the issues are resolved", the communiqué said.

11. Accordingly, the Pretoria regime continues to refuse to comply with United Nations resolutions to hand over the international Territory of South West Africa to the United Nations and continues to frustrate the efforts of the UN Council for the Territory. Hence, South Africa's presence in the Territory should be regarded as an act of aggression and a serious threat to international peace and security.

Bantustans in South West Africa

12. In the meantime, Pretoria's Bantustan policy is now being implemented in South West Africa, in defiance of the United Nations and against the wish and interests of the African population. On May 16, 1968, the so-called Lower House of Parliament of South Africa approved a Bill aimed at splitting the Territory of South West Africa into a patch work of Bantustans. The Bill will go to the Senate, where it is expected to be approved automatically.

13. On May 28, 1968, the UN Council for South West Africa called for "concerted international action" to prevent South Africa carrying out plans to dismember the International Territory of South West Africa. It declared further that legislation before the South African "Parliament" with regard to South West Africa was illegal and "calculated to destroy the unity of the people and the territorial integrity of South West Africa. "This illegal action would seriously aggravate the threat to international peace and security in the area", the Council stated. However, Mr. Michel Botha, Pretoria's Minister of "Bantu Administration and Development" said on May 16, 1968, that his Government would go ahead with its "Balkanization" plan for the Territory despite UN objections. "The Government is not prepared to allow overseas bodies to dictate what it should do about the peoples of South West Africa", he declared.

Security Council asked for effective measures

14. On June 12, 1968, the United Nations General Assembly passed a resolution on Namibia (South West Africa) by 96 votes, with South Africa and Portugal voting against and 18 States, mainly West European States and Malawi abstaining. Botswana and Lesotho were among the six countries who were absent. The resolution recommended, among others, world wide economic measures against South Africa to force an end to its control of Namibia. It requested the Security Council to take urgent appropriate steps to ensure the immediate removal of the South African presence and to secure independence for South West Africa as the new State of Namibia. It also called on all States to "desist from those dealings with the Government of South Africa which would have the effect of perpetuating South Africa's illegal occupation of Namibia". The resolution also condemned the actions of States which by their continued political, military and economic collaboration with South Africa had encouraged it to obstruct the attainment of independence by Namibia. Finally, the resolution spelt out in greater detail than before the tasks assigned to the Council for Namibia. The Council was asked as a matter of priority to set up special training programmes for Namibians and to consider the question of issuing travel documents to them. The resolution as a whole is attached to this report as Annex II.

15. Finally, the reply of the Secretary-General of the United Nations to a communication sent to him by the Administrative Secretary-General with regard to the appointment of an African High Commissioner for Namibia (South West Africa) is attached to this report as Annex III.

1. Legislation that should be repealed

- Natives (Urban Areas) Proclamation, 1951 ;
- Extra-Territorial and Northern Natives Control Proclamation, 1935 ;
- Mines Proclamation, 1917 (Provisions making
- Masters and Servants Proclamation, 1920 (breach of labour
- Regulations for Proclaimed Areas, 1955 (contract a criminal
- (offence.
- Prohibition of Mixed Marriages ordinance, 1953 ;
- Immorality Amendement ordinance, 1954 ;
- Criminal Procedure ordinance, 1963 (in so far as it restricts the
right to apply for bail) ;
- Other legislation that should be repealed is South African Legislation
and thus listed there.

2. Legislation that should be amended

- Municipal Ordinance, 1963 ;
- Village Management Boards Ordinance, 1963 ;
- Criminal Procedure Ordinance, 1963 (in relation to the persons with
powers of arrest) ;
- Wages and Industrial Conciliation Ordinance, 1952 ;
- Mines and Works Regulations, 1956 (job reservation and paid holidays
provisions) ;
- Regulations under the Children's Ordinance, 1961 (G.N. 75 of 1962
G.N.27 of 1966) ;
- Social Pensions Ordinance, 1965 ;
- Education Ordinance, 1962.

3. Legislation that should be replaced

- South West Africa Constitution Act, 1925 ;
- South West Africa Affairs Act, 1949 ;
- South West Africa Affairs Amendment Act, 1951 ;
- South West Africa Native Affairs Administration Act, 1954 ;
- The Land Settlement Laws ;
- Proclamations relating to the Rehoboth Gebiet, 1928 and subsequent ;

- Native Administration Proclamation, 1922 ;
- Native Administration Proclamation, 1928 ;
- Establishment of a Coloured Council Ordinance, 1961 ;
- Establishment of an Elected Coloured Council Ordinance, 1966 ;
- Establishment of Local Government in Coloured Townships Ordinance, 1965.

Sources : UN Document E/CN.4/949/Add.4 on Apartheid and Racial Discrimination -
page 513.

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY [2372 (XXII)]

Question of South West Africa

The General Assembly,

Having considered the report of the United Nations Council for South West Africa,¹⁾

Recalling its resolutions 1514 (XV) of 16 December 1960, 2145 (XXI) of 27 October 1966, 2248 (S-V) of 19 May 1967, 2324 (XXII) and 2325 (XXII) of 16 December 1967,

Noting with grave concern that the refusal of the Government of South Africa to withdraw its administration from the Territory in accordance with the relevant United Nations resolutions,

Mindful of the serious consequences of the continued foreign occupation by South Africa of the Territory of South West Africa has obstructed the attainment of independence by the Territory in accordance with the relevant United Nations resolutions,

Concerned that the continued refusal of the Government of South Africa to comply with its obligations to the United Nations and to the international community as a whole, making it impossible for the United Nations Council for South West Africa to perform effectively the functions that were entrusted to it by the General Assembly, constitutes a flagrant defiance of the authority of the United Nations,

Deploring the defiance by the Government of South Africa of General Assembly resolution 2324 (XXII) and Security Council resolutions 245 (1968) of 25 January 1968 and 246 (1968) of 14 March 1968 concerning the illegal arrest, deportation, trial and conviction of South West Africa patriots engaged in the struggle for independence,

1) A/7088 and Corr.1.

Conscious of the special and direct responsibility of the United Nations towards the people and the Territory of South West Africa, in accordance with the provisions of General Assembly resolutions 2145 (XXI) and 2248 (S-V),

Recalling Security Council resolution 246 (1968), in particular its last preambular paragraph, in which the Security Council took cognizance of its special responsibility towards the people and the Territory of South West Africa,

Taking into account the views expressed by representatives of the people of South West Africa in their consultations with the United Nations Council for South West Africa,

1. Proclaims that, in accordance with the desires of its people, South West Africa shall henceforth be known as "Namibia" ;

2. Takes note of the report of the United Nations Council for South West Africa and expresses its appreciation for the Council's efforts to discharge the responsibilities and functions entrusted to it ;

3. Decides that the United Nations Council for South West Africa shall be called "United Nations Council for Namibia" and that the United Nations Commissioner for South West Africa shall be called "United Nations Commissioner for Namibia" ;

4. Decides that, taking into account the provisions of General Assembly resolution 2248 (S-V), the United Nations Council for Namibia shall perform, as a matter of priority, the following functions :

(a) In consultation and co-operation with the specialized agencies and other appropriate organs of the United Nations, which under section III, paragraph 2, of resolution 2248 (S-V) were requested to render technical and financial assistance to Namibia, the Council shall assume responsibility for establishing a co-ordinated emergency programme for rendering such assistance in order to meet the exigencies of the present situation ;

(b) The Council shall organize a training programme for Namibians in consultation with those Governments which indicate their interest and concern so that a cadre of civil servants and of technical and professional personnel may be developed who would be in a position to undertake the public administration and the social, political and economic development of the State ;

(c) The Council shall continue with a sense of urgency its consultations on the question of issuing to Namibians travel documents enabling them to travel abroad ;

5. Reaffirms the inalienable right of the Namibian people to freedom and independence and the legitimacy of their struggle against foreign occupation ;

6. Condemns the Government of South Africa for its persistent refusal to comply with the resolutions of the General Assembly and the Security Council, its refusal to withdraw from Namibia and its obstruction of the efforts of the United Nations Council for Namibia to proceed to Namibia ;

7. Condemns the actions of the Government of South Africa designed to consolidate its illegal control over Namibia and to destroy the unity of the people and the territorial integrity of Namibia ;

8. Condemns the actions of those States which by their continued political, military and economic collaboration with the Government of South Africa have encouraged that Government to defy the authority of the United Nations and to obstruct the attainment of independence by Namibia ;

9. Calls upon all States to desist from those dealings with the Government of South Africa which would have the effect of perpetuating South Africa's illegal occupation of Namibia and to take effective economic and other measures with a view to securing the immediate withdrawal of the South African administration from Namibia ;

10. Further calls upon all States to provide the necessary moral and material assistance to the Namibian people in their legitimate struggle for independence and to assist the United Nations Council for Namibia in the discharge of its mandate ;

11. Considers that the continued foreign occupation of Namibia by South Africa in defiance of the relevant United Nations resolutions and of the Territory's established international status constitutes a grave threat to international peace and security ;

12. Reiterates its demand that the Government of South Africa withdraw from Namibia, immediately and unconditionally, all its military and police forces and its administration ;

13. Recommends to the Security Council urgently to take all appropriate steps to secure the implementation of the present resolution and to take effective measures in accordance with the provisions of the Charter of the United Nations to ensure the immediate removal of the South African presence from Namibia, and to secure for Namibia its independence in accordance with General Assembly resolution 2145 (XXI) ;

14. Requests the Secretary-General to continue to provide all possible assistance to enable the United Nations Council for Namibia to perform its duties ;

15. Requests the Secretary-General to report to the General Assembly and to the Security Council on the implementation of the present resolution.

THE SECRETARY-GENERAL

3 May, 1968.

Mr. Secretary-General,

I have the honour to acknowledge receipt of your letter N° TR 100 (3) SWA (1) dated 10 April, in which you draw my attention to the provisions of paragraph 7 of resolution N° CM/Res.139 (X) adopted at the last Ordinary Session of the OAU Council of Ministers, which met at Addis Ababa from 20 to 24 February.

I have taken note of the suggestion that an African candidate be visualised for the post of United Nations Commissioner for South West Africa. As regards this post, I believe it would be useful to draw your attention to the Secretary-General's note (document A/6930 of 1st December 1967), a copy of which is attached to this letter. The last proposal by the Secretary-General in respect of this matter was accepted by the General Assembly at its 1635th plenary meeting on Saturday 16 December 1967.

I must also bring to your cognizance that when the General Assembly decided to establish the post of United Nations Commissioner for South West Africa, my first idea was that this post should be occupied by an African. I therefore offered the post to the permanent representative to the United Nations of an African country who, however, was not in a position to accept it. I also consulted with the permanent representatives of several African countries, as well as with my African colleagues in the Secretariat.

It became evident from my consultations that the general feeling was that it would be better at this stage that a non-African occupy the post of United Nations Commissioner for South West Africa. Furthermore it became clear to me that, for the time being at least, the volume of work involved would not justify the nomination of a full-time Commissioner, bearing in mind in particular the delicate financial position of the Organization. I therefore recommended that the Organization's Legal Advisor be designated United Nations Acting Commissioner for South West Africa, a post which he occupies over and above

his functions as Legal Advisor. This recommendation met with the agreement of the United Nations Council for South West Africa and was accepted by the General Assembly.

I would be most obliged if you could be so good as to bring these considerations to the attention of the Heads of State and Government at the next OAU Assembly. If the Heads of State consider that it would now be desirable to designate an African, it goes without saying that I will be happy to respect their wishes. In such a case, my intention will be to recommend that one of the senior African officers of the Secretariat assume the functions of United Nations Acting Commissioner for South West Africa, in addition to his responsibilities within his own department. It is of course understood that I shall consult the United Nations Council for South West Africa before submitting my recommendation for approval by the General Assembly. A further reason which might perhaps militate for such an amendment is that the Legal Advisor is already performing very heavy tasks and he is finding difficulty in carrying out his additional functions as United Nations acting Commissioner for South West Africa.

Accept please, Mr. Secretary-General, the assurances of my highest considerations.

U Thant

His Excellency
Mr. Diallo Telli
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QUESTION OF SOUTH WEST AFRICA

Note from the Secretary-General

At its 1524th plenary meeting on 13 June 1967, the General Assembly adopted a proposal by the Secretary-General (A/6556) following on resolution 2248 (S-V) of 19 May 1967 that "as an interim measure, it shall designate as United Nations acting Commissioner for South West Africa, Mr. Constantin A. Stavropoulos, who will exercise the functions in addition to those he is exercising as United Nations Legal Advisor". At the same time, the Secretary-General undertook to nominate a Commissioner which the General Assembly would designate at its twenty second session. Nevertheless having carried out the consultations required, the Secretary-General would wish to propose that the present interim arrangement be extended and that the Legal Advisor continue to exercise the functions of acting Commissioner until the General Assembly designates a Commissioner, upon presentation of a nomination by the Secretary-General.



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